

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 6016) CASE CLOSURE UNDER THE
6 DOUGLAS A. OSE) ENFORCEMENT PRIORITY SYSTEM
7 OSE FOR CONGRESS AND VONA L.)
8 COPP, IN HER OFFICIAL CAPACITY)
9 AS TREASURER)
10

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12 **GENERAL COUNSEL'S REPORT**

13 Under the Enforcement Priority System, matters that are low-rated

14 _____ are
15 forwarded to the Commission with a recommendation for dismissal. The Commission has
16 determined that pursuing low-rated matters compared to other higher rated matters on the
17 Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

18 The Office of General Counsel scored MUR 6016 as a low-rated matter. In this matter,
19 the complainant, Igor A. Birman, alleges that congressional candidate Douglas A. Ose, and Ose
20 for Congress ("Committee") and Vona L. Copp, in her official capacity as treasurer, broadcast a
21 campaign advertisement entitled "Sleep" numerous times on television and on the Committee's
22 website, and that the advertisement violated one of the Commission's disclaimer provisions.
23 Specifically, the advertisement allegedly failed to include a clearly-identifiable photograph of the
24 candidate, comprising at least 80% of the vertical screen height, as set forth in 11 C.F.R.
25 § 110.11(c)(3)(ii)(B). Instead, according to the complainant, the last frame of "Sleep" includes a
26 photographic image of Ose comprising only approximately 20% of the advertisement's vertical
27 screen height, thus rendering the candidate's photograph "diminutive and unrecognizably small"
28 and not "clearly identifiable." Attached to the Complaint as Exhibit A is what the complainant
29 describes as the last frame of "Sleep," in which a photograph of Ose is slightly less than one inch

1 tall, within a photograph of a screen that is approximately 4 ½ inches tall. Complainant
2 concludes that, since respondents' other campaign advertisements included clearly-identifiable
3 likenesses of the candidate, this particular advertisement was intended to "mislead and confuse
4 voters" and "dissociate the likeness of Candidate Ose from the [unspecified] negative and
5 defamatory message contained therein."

6 In its response, the Committee disputed the complainant's allegation that Mr. Ose was
7 not clearly identified in the advertisement, as it included the requisite written disclaimer "Paid
8 for by Doug Ose for Congress," as well as the requisite verbal disclaimer by Mr. Ose: "I am
9 Doug Ose, and I approved this ad" (the so-called "stand by your ad" disclaimer), accompanied
10 by the above-described photograph of Mr. Ose. In addition, the Committee takes the position
11 that the "80% of vertical screen threshold" standard for photographic images of candidates is a
12 guideline only, not a requirement. According to the Committee, the "80% guideline" serves as a
13 safe harbor, in that advertisements using candidate images of that size or larger are deemed to
14 have "clearly identified" them, but is not the only method of insuring that the candidate is
15 "clearly identified." Given that the advertisement at issue included the written disclaimer and
16 oral statement by Mr. Ose described *supra*, and that, as complainant acknowledges, numerous
17 campaign advertisements identifying Mr. Ose were disseminated during the campaign, thus
18 familiarizing the electorate with Mr. Ose's image, the Committee suggests that the "public was
19 not misled" and that the Commission decline to pursue the complaint.

20 It appears from the disclaimers that were provided in the advertisement, coupled with the
21 photograph of the candidate, that the public would not have been misled as to who paid for the
22 advertisement. Thus, in furtherance of the Commission's priorities and resources, relative to
23 other matters pending on the Enforcement docket, the Office of General Counsel believes that

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the Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

RECOMMENDATION

The Office of General Counsel recommends that the Commission dismiss MUR 6016, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letters. Closing the case as of this date will allow CELA and General Law and Advice the necessary time to prepare the closing letters and the case file for the public record.

Thomasenia P. Duncan
General Counsel

10/7/09
Date

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Attachments:

1. Case Narrative
2. Copy of frame from "Sleep" advertisement displaying image of Mr. Ose.